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(named herein as a "Cross-Defendant"),
Southern Highlands Community Association

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * *

In re

ALESSI & KOENIG, LLC,

Debtor.

Case No.: BK-S-16-16593-ABL

Adv. Case No.: 17-01032

Chapter 7

CKVC INVESTMENTS LLC,

Plaintiff.

vs.

SANDRA A. BOBE; AND IVAN D.
WINDER; AND NATIONSTAR
MORTGAGE LLC; AND SOUTHERN
HIGHLANDS COMMUNITY
ASSOCIATION; AND ROYAL
HIGHLANDS STREET AND LANDSCAPE
MAINTENANCE CORPORATION; AND
THE BANK OF NEW YORK MELLON
FKA THE BANK OF NEW YORK. AS
SUCCESSOR TRUSTEE TO JPMORGAN
CHASE BANK, N.A., AS TRUSTEE FOR
THE HOLDERS OF SAMI II TRUST 2006-
AR7, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-AR7; AND
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; DOES I-
V, INCLUSIVE, ROE CORPORATIONS I-
V,

**MOTION TO REMAND ACTION TO
NEVADA STATE COURT**

Date of Hearing: na

Time of Hearing: na

Place:

Judge: Hon. August B. Landis

ALVERSON, TAYLOR, MORTENSEN & SANDERS

LAWYERS

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1 INCLUSIVE,

2 Defendants.

3 THE BANK OF NEW YORK MELLON FKA
4 THE BANK OF NEW YORK AS
5 SUCCESSOR TRUSTEE TO JPMORGAN
6 CHASE BANK, N.A., AS TRUSTEE FOR
7 THE HOLDERS OF SAMI II TRUST 2006-
8 AR7, MORTGAGE-PASS THROUGH
9 CERTIFICATES, SERIES 2006-AR7,

10 Counter-claimant,
11 vs.

12 CKVC INVESTMENTS, LLC,

13 Counter-defendant

14 THE BANK OF NEW YORK MELLON FKA
15 THE BANK OF NEW YORK AS
16 SUCCESSOR TRUSTEE TO JPMORGAN
17 CHASE BANK, N.A., AS TRUSTEE FOR
18 THE HOLDERS OF SAMI II TRUST 2006-
19 AR7, MORTGAGE-PASS THROUGH
20 CERTIFICATES, SERIES 2006-AR7,

21 Cross-Claimant
22 vs.

23 SOUTHERN HIGHLANDS COMMUNITY
24 ASSOCIATION; and ALESSI & KOENIG,
LLC,

Cross-Defendants

MOTION TO REMAND ACTION TO NEVADA STATE COURT

21 COMES NOW, the SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION (the
22 “Association”), the involuntarily removed third party who hired Debtor ALESSI & KOENIG,
23 LLC (“Debtor” or “Alessi”) for their expertise to properly conduct foreclosure auctions, though
24

1 their counsel, and hereby move pursuant to 28 U.S.C. §§ 1447(c) and 1452(b) and for an order
 2 remanding to the Eighth Judicial District Court, Clark County, Nevada, any and all claims and
 3 causes of action removed by BANK OF AMERICA, N.A. (the “Bank”) pursuant to the Notice of
 4 Removal filed herein on March 8, 2017. See ECF No. 181.¹

5 The removals sought by the Bank and by the other Banks² in this bankruptcy case are
 6 nothing more than blatant forum shopping: in state courts the Banks are likely to lose their cases.
 7 Beginning on February 8, 2016, less than two weeks after the January 26, 2016 decision by the
 8 Nevada Supreme Court in *Saticoy Bay*³ the Banks began to remove hundreds of State Court
 9 actions⁴ to escape the *Saticoy Bay* ruling. They want to litigate these cases in the Bankruptcy
 10 Court because they believe that a beneficial Ninth Circuit’s ruling in *Bourne Valley*⁵ will provide
 11 a more favorable outcome. See, e.g., ECF Nos. 94 at 3, 108 at 3, 117 at 3 (Motions for
 12 Determination, asserting no justification for removal beyond forum shopping based on the
 13 Bourne Valley ruling).

14 ///

15 ///

16 _____
 17 1 References to documents in this Court’s record are to “ECF No. X at Y” where “X” is the
 18 docket number and “Y” is the document’s page number. References to the state court records
 19 annexed to the notices of removal filed herein are to “ECF No. X, Ex. Y, PDF p. Z” where “X”
 20 is the docket number, “Y” is the Exhibit number, and “Z” is electronic PDF page number
 21 assigned by the CM / ECF system on the document’s header. The Federal Rules of Bankruptcy
 22 Procedure are referred to herein as “FRBP”. The Federal Rules of Civil Procedure are referred
 23 to herein as “FRCP”. The Nevada Rules of Civil Procedure are referred to herein as “NRCP”.

24 2 The term “Banks” as used herein collectively refers to the financial institutions and loan
 servicers that have removed or intend to remove to this Court various Nevada state court lawsuits
 concerning non-judicial foreclosure proceedings.

3 *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Div. of Wells
 Fargo Bank, N.A.*, 133 Nev. Adv. Op. 5, 388 P.3d 970, 2017 WL 398426 (Nev. Jan. 26, 2017).

4 The term “State Court actions” as used herein collectively refers to the state court proceedings
 concerning non-judicial foreclosures which the Banks have removed or intend to remove to this
 Court, including the one sought to be removed by U.S. Bank in ECF No. 228.

5 *Bourne Valley Court Trust v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016).

MEMORANDUM OF POINTS & AUTHORITIES

I.

RELEVANT FACTS AND PROCEDURAL HISTORY

1. On May 7, 2015, Plaintiff CKVC INVESTMENTS LLC commenced this action in the Eighth Judicial District Court for Clark County, Nevada by filing a Complaint to Quiet title. *See*, ECF No. 181, Ex. 1.

2. On June 23, 2015, the Association was dismissed as a Defendant without prejudice by CKVC. *See*, ECF No. 181, Ex. 17. In response, on July 9, 2015, the Bank filed its Answer and Cross-Claim against the Association. *See*, ECF No. 181, Ex. 24.

3. According to the Bank's Cross-Claim, the only claim that the Bank has really asserted against this moving Third-Party Defendant is that it failed to comply with statutory non-judicial foreclosure procedures, in particular the notice provisions of NRS Chapter 116. *See*, ECF No. 181, Ex. 24, at ¶¶ 59-68. The Bank has also alleged that the Association was unjustly enriched by any funds received from the HOA foreclosure sale above the super-priority amount of its lien. *Id.* at ¶¶ 58-63.

4. The property in question is located within the Association at 10852 Fishers Island, Las Vegas, Nevada 89141 (the "subject property") and not related to debtor. *Id.* at ¶ 3. The borrowers failed to pay the monthly association fees to the Association, and as a result, the Association's collection counsel, Debtor, recorded a Notice of Delinquent Assessment (Lien) as part of its efforts to collect the outstanding amount due. *Id.* at ¶ 19.

5. Alessi then filed a Notice of Default and Election to Sell. *Id.* at ¶ 20. Alessi recorded a Notice of Trustee's Sale. *Id.* at ¶ 22.

6. These foreclosures have resulted in extensive litigation in both Nevada State District Courts and Federal District Courts.

7. Alessi was a law firm that conducted foreclosure sales for many homeowners associations on their liens, including this involuntarily removed Association. Debtor commenced the instant case under Chapter 7 of title 11 of the United States Code on December 13, 2016. *See*, ECF No. 53.

8. On November 17, 2016 the Court denied all parties' Motions for Summary Judgment. *See*, ECF No. 56.

9. On December 1, 2016, at the pre-trial conference, the trial in this matter was already continued once to allow the parties to prepare. On February 9, 2017, the Bank brought up its intent to remove this matter during the continued pre-trial calendar call, after the ruling in *Saticoy Bay*, and the matter was stayed until the bankruptcy stay could be lifted. *Id.*

10. The Nevada Supreme Court has interpreted 116.3116 et seq. ("NRS Chapter 116") to give homeowners associations a "super priority" lien on a homeowner's property for up to nine months of unpaid association dues, which extinguishes all junior interests in the property, including a mortgage lender's first deed of trust. *See, SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014).

11. On August 12, 2016, a divided Ninth Circuit panel issued its decision in *Bourne Valley*. There, a divided panel of the Ninth Circuit held that Nevada Revised Statutes Chapter 116's so-called "opt-in" non-judicial foreclosure notice procedure, "facially violated mortgage lenders' constitutional due process rights." *Id.*, 832 F.3d at 1160.⁶ The *Bourne Valley* majority opinion did not address the fact that the Supreme Court of Nevada had already construed NRS Chapter 116 as incorporating notice to the mortgage lenders in various ways independent of the

⁶ *See, id.* at 1156 ("We hold that the Statute's 'opt-in' notice scheme, which required a homeowners' association to alert a mortgage lender that it intended to foreclose only if the lender had affirmatively requested notice, facially violated the lender's constitutional due process rights under the Fourteenth Amendment to the Federal Constitution.")

1 so-called “opt-in” procedure. Even the dissenting justices in *SFR* agreed that the Nevada
 2 Supreme Court’s acknowledgement of the other forms of notice was the proper interpretation of
 3 Nevada’s statutory scheme. *See, SFR*, 334 P.3d at 422. Further, the Supreme Court of Nevada
 4 has already concluded that NRS 116 does not offend due process. *Id.* at 418.

5 12. On January 26, 2017, the Nevada Supreme Court held in *Saticoy Bay* that the
 6 foreclosure procedures set forth under NRS 116.3116 et seq. are Constitutional and the Banks’
 7 arguments related to due process fail because of no state actor.⁷

8 13. In *Saticoy Bay*, the Nevada Supreme Court restated its interpretation of NRS
 9 116.3116(4). Because the Nevada Supreme Court construed the statute as a whole, it concluded
 10 that “[the bank] ‘was on notice that by operation of the statute, the [earlier recorded] CC&Rs
 11 might entitle the HOA to a super priority lien . . . which would take priority over a [later
 12 recorded] first deed of trust.’” *Saticoy Bay*, 2017 WL 398426 at *4 (quoting *SFR*, 334 P.3d at
 13 418 (alterations in original)). Because the Nevada Supreme Court rejected the statutory
 14 interpretation relied on in *Bourne Valley* and found that due process was not implicated, the
 15 statutory interpretation of Nevada law in *Saticoy Bay* is now controlling. Pursuant to Ninth
 16 Circuit precedent, *Saticoy Bay* is an “intervening decision on controlling state law by a state
 17 court of last resort.”⁸

18
 19 ⁷ *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 133 Nev. Advance
 Opinion, No. 68630 (Nev. Jan. 26, 2017).

20 ⁸ *Miller v. Gammie*, 335 F.3d 889, 892-893 (9th Cir. 2003) (“where the reasoning or theory of
 21 our prior circuit authority is clearly irreconcilable with the reasoning or theory of intervening
 22 higher authority, [a court] should consider itself bound by the later . . . and reject the prior circuit
 23 opinion as . . . overruled.”); *United States v. Swisher*, 771 F.3d 514, 524 (9th Cir. 2014); *CRST*
 24 *Van Expedited, Inc. v. Werner Enterprises, Inc.*, 479 F.3d 1099, 1106 n.6 (9th Cir. 2007); *High v.*
Ignacio, 408 F.3d 585, 590 (9th Cir. 2005) (“This court accepts a state court ruling on questions
 of state law.”); *Rotec Indus., Inc. v. Mitsubishi Corp.*, 348 F.3d 1116, 1122 n.3 (9th Cir. 2003);
Cal. Teachers Ass’n v. State Bd. of Educ., 271 F.3d 1141, 1146 (9th Cir. 2001); *Pershing Park*
Villas Homeowners Ass’n v. United Pac. Ins. Co., 219 F.3d 895, 903 (9th Cir. 2000); *Owen v.*
United States, 713 F.2d 1461, 1464 (9th Cir.1983) (Ninth Circuit’s interpretation of Nevada law

14. The Ninth Circuit's *Bourne Valley* ruling and the Nevada Supreme Court's *Saticoy Bay* ruling are in direct conflict and certiorari proceedings as to both cases are now pending before the United States Supreme Court.⁹

15. The Banks waited until February 8, 2017 to file a motion to lift the stay in an effort to remove the matter from state court. *See, e.g.*, ECF Nos. 94 at 3, 108 at 3, 117 at 3

16. On March 8, 2017, the Bank filed a removal action to bring the matter to this Court under the guise of resolving the bankruptcy. *See*, ECF No. 181.

II.

LEGAL ARGUMENT

A. LEGAL STANDARDS

The removing party bears the burden of establishing federal jurisdiction and that removal was proper. *See Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (It is "a longstanding, near canonical rule that the burden on removal rests with the removing defendant.") (citations omitted); *see also Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) ("The 'strong presumption' against removal jurisdiction means that the defendant always has the

is "only binding in the absence of any subsequent indication from the [Nevada] courts that our interpretation was incorrect."); *see also Bonilla v. Adams*, 423 F. App'x 738, 740 (9th Cir. 2011) ("We are required to follow intervening decisions of the [Nevada] Supreme Court that interpret state law in a way that contradicts our earlier interpretation of that law."); *Henderson v. Pfizer, Inc.*, 285 F. App'x 370, 373 (9th Cir. 2008) ("a state supreme court can overrule us on a question of state law"); *see also O'Brien v. Skinner*, 414 U.S. 524, 531 (1974) ("It is not our function to construe a state statute contrary to the construction given it by the highest court of a State.").

9 *Bourne Valley Court Trust* will be filing a certiorari petition with the United States Supreme Court. *See* Dkt. No. 72-1, *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, No. 15-15233 (9th Cir. 2016) (filed Nov. 9, 2016). On January 30, 2017, the United States Supreme Court granted *Bourne Valley Court Trust's* motion to extend time to file its petition for writ of certiorari until April 3, 2017. *See Bourne Valley Court Trust v. Wells Fargo Bank, NA.*, Case No. 16A753 (Sup. Ct. 2016) (filed Jan. 30, 2017). On February 8, 2017, the Nevada Supreme Court granted a stay of remittitur in *Saticoy Bay* based on Wells Fargo's stated intent to file a petition for writ of certiorari to the U.S. Supreme Court. Case No. 68630, Order Granting Motion to Stay Remittitur (Nev. Feb. 8, 2017).

burden of establishing that removal is proper.”). In determining whether the removing party has satisfied this burden, federal courts construe removal statutes, like other jurisdictional statutes, strictly because federal courts are courts of limited jurisdiction, and the rights of states are to be respected.¹⁰

Applying these principles, district courts have strictly construed the removal provision in 28 U.S.C. § 1452(a). *See, e.g., Lipoderm inst., Inc. v. Moca Holdings, LLC*, No. CV 10-02389-RGK, 2010 WL 1708848, at *1 (C.D. Ca. April 27, 2010) (where the defendants had removed an action based upon § 1452(a), the court stated that the “Ninth Circuit has held unequivocally that the removal statute is construed strictly against removal” and remanded the action to Los Angeles Superior Court because removal was improper). Finally, because federal courts strictly construe removal statutes, all doubts are resolved in favor of remand. *Gaus*, 980 F.2d at 564, 566.

A federal bankruptcy court can consider, sua sponte, its jurisdiction over the subject matter and whether to remand the matter to the state court and does not have to rely upon a motion by any party to remand a case under § 1452(b). *See Driggers v. Exchange Parts (In re Exchange Parts)*, 138 B.R. 585, 586 (Bkrtcy.W.D.Ark.1992); *Smith v. City of Picayune*, 795 F.2d 482 (5th Cir.1986). The numerous persuasive equitable considerations in this matter favor that the State Court Action should be tried in its original forum and therefore this Court should remand this matter. Chief among these considerations is the blatant forum shopping on the part of the removing party.

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¹⁰ *See Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002); *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,377 (1994); *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09, (1941); *Healy v. Ratta*, 292 U.S. 263, 270 (1934); *Matthews v. Rodgers*, 284 U.S. 521, 525 (1932); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004); *Gould v. Mutual Life Ins. Co. of N.Y.*, 790 F.2d 769, 773 (9th Cir. 1986).

1 A bankruptcy court's broad power to remand is provided in 28 U.S.C. § 1452(b). Section
 2 1452(b) provides that "a court to which an action is removed may remand the action on '**any**
 3 **equitable ground.**'" *In re Roman Catholic Bishop of San Diego*, 374 B.R. 756, 761 (Bankr. S.D.
 4 Cal. 2007) (emphasis added). "This 'any equitable ground' remand standard is an unusually
 5 broad grant of authority. It subsumes and reaches beyond all of the reasons for remand under
 6 nonbankruptcy removal statutes." *McCarthy v. Prince*, 230 B.R. 414, 417 (BAP 9th Cir. 1999)
 7 (citing *Chambers v. Marathon Home Loans*, 96 B.R. 296, 299-300 (Bankr. E.D. Cal. 1989). No
 8 exceptional or special circumstances are required. *Roman Catholic Bishop of San Diego*, 374
 9 B.R. at 761. The standard for remand is not statutorily defined. However, case law has provided
 10 "factors" to assist with the remand decision. *See In re Enron Corp.*, 296 B.R. 505, 508-9
 11 (C.D.Cal.2003).

12 The Ninth Circuit considers a range of factors in determining whether to remand on
 13 equitable grounds. These factors include: 1) the likelihood that the commencement of the
 14 proceeding in bankruptcy court involves forum shopping by one of the parties; 2) the effect or
 15 lack thereof on the efficient administration of the estate if the Court recommends remand; 3) the
 16 extent to which state law issues predominate over bankruptcy issues; 4) comity; 5) jurisdictional
 17 basis, if any, other than § 1334; 6) presence of related proceeding commenced in state court or
 18 other nonbankruptcy proceeding; 7) the degree of relatedness or remoteness of state court
 19 proceeding to main bankruptcy case; 8) the substance rather than the form of an asserted core
 20 proceeding; 9) the feasibility of severing state law claims from core bankruptcy matters to allow
 21 judgments to be entered in state court with enforcement left to the bankruptcy court; 10) the
 22 existence of a right to a jury trial; 11) difficult or unsettled nature of applicable law; 12) the
 23 burden on the bankruptcy court's docket; 13) the presence in the proceeding of nondebtor
 24

parties; and 14) the prejudice to the party involuntarily removed from state court.¹¹

While these factors can assist a court's decision, they are not requirements and no one factor is required because the standard remains that **any** equitable ground is enough to remand. *In re Roman Catholic Bishop of San Diego*, 374 B.R., at 762. Further, “[w]hen a state court proceeding sounds in state law and bears a limited connection to a debtor's bankruptcy case, abstention is particularly compelling.” *In re Enron Corp.*, 296 B.R. at 509 (quoting *In re United Container LLC*, 284 B.R. 162 (Bankr.S.D.Fla.2002)). Here, nearly all of the equitable factors strongly favor remand.

B. THE APPLICATION OF EQUITABLE FACTORS IN THIS MATTER STRONGLY FAVOR REMAND

1. The Commencement of This Proceeding in Bankruptcy Court Involves Blatant Forum Shopping by the Bank

This first factor is fully in favor of remand as the Bank removed this matter for the sole purpose of forum shopping.¹² Courts will remand a matter if there appears to be forum shopping,

¹¹ See, *In re Cedar Funding, Inc.*, 419 B.R. 807, 820 n.18 (9th Cir. BAP 2009)(citing *In re Enron Corp.*, 296 B.R. 505, 508 n.2 (C.D. Cal. 2003)); *Brown v. Affiliated Computer Servs.*, No. C08-5367 FDB, 2008 WL 2856854, at *2 (W.D. Wash. July 21 2008) (citing *In re Cytodyn of NM, Inc.*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007) and *Citigroup, Inc. v. Pac. Inv. Mgmt. Co.*, 296 B.R. 505, 508 (C.D. Cal. 2003)). See also *In re Tucson Estates*, 912 F.2d 1162 (9th Cir. 1990).

¹² See, e.g., ECF No. 328 at 7:16-20, Motion to Set Case Management Conference (Bank of America, N.A., attaching list of *all removed state court actions herein to date*, stating, “A dispositive question in each removed action is whether the Debtor’s foreclosure, conducted pursuant to a statute that the Ninth Circuit deemed unconstitutional, could have extinguished the first deed of trust; or whether, as BANA believes, such deed of trust was not extinguished and continues to encumber the property. See *Bourne Valley*, 832 F.3d at 1160. A determination on the facial due process violation inherent in the Debtor’s foreclosure sales would dispose of a key issue in all of the removed cases.”); see also ECF No. 94 at 3, Motion for Determination (Bank of America, N.A.); ECF No. 108 at 3 Motion for Determination (Caliber Home Loans, Inc., Fay Servicing, LLC, Nationstar Mortgage, LLC, Bayview Loan Servicing, LLC, Select Portfolio Servicing, Inc., Carrington Mortgage, Citibank, Shellpoint Mortgage Servicing, Ocwen Loan Servicing, LLC, Specialized Loan Servicing, LLC, BSI Financial Services, Inc., Residential Credit Solutions, Inc., Seterus, Inc., and Ditech Financial, LLC (see ECF. No. 107 at 7-15 (identified under column entitled “Lender Entity”)); ECF No. 117 at 3, Motion for Determination

1 even from the mere removal after losing a Motion for Summary Judgment. *In re Schempp Real*
 2 *Estate, LLC*, 303 B.R. 866, 878 (Bankr. D. Colo. 2003).

3 Here, the Banks have removed hundreds of State Court actions merely to avoid the
 4 Nevada Supreme Court's ruling in *Saticoy Bay*, and to exploit non-dispositive case law based on
 5 the Ninth Circuit's ruling in *Bourne Valley*. The Banks' removal of this matter only came about
 6 after the Nevada Supreme Court rendered its decision in *Saticoy Bay* on January 26, 2017, whose
 7 outcome is completely opposite of *Bourne Valley*.¹³ This matter was not even stayed in state
 8 court after the debtor's Bankruptcy on December 13, 2016, but done quickly after the decision in
 9 *Saticoy Bay* was rendered at the continued pre-trial conference.

10 The Nevada Supreme Court held in *Saticoy Bay* that there is no state actor involved in a
 11 foreclosure sale and therefore the Bank's due process claims, as well as similar claims, fail in
 12 state court. While the Nevada Supreme Court's determination of absence of state action in
 13 *Saticoy Bay* devastated the vast majority of claims by the Banks in the State Court actions, the
 14 true impact of the case concerned its determination on notice. In *Saticoy Bay*, the Nevada
 15 Supreme Court restated its interpretation of NRS 116.3116(4). It construed the statute as a
 16 whole, concluding that "[the bank] 'was on notice that by operation of the statute, the [earlier
 17 recorded] CC&Rs might entitle the HOA to a super priority lien . . . which would take priority
 18 over a [later recorded] first deed of trust.'" *Saticoy Bay*, 2017 WL 398426 at *4 (quoting *SFR*,
 19 334 P.3d at 418 (alterations in original)). This rendered the lack of notice defense based on
 20 *Bourne Valley* on which the Banks have relied to argue that the non-judicial foreclosures sales
 21 did not divest them of their interest in the foreclosed properties under their deeds of trust moot;
 22 the very defense which they rely on for their proposed omnibus dispositive motion is now
 23 (PennyMac Loan Services, LLC, Nationstar Mortgage, LLC, Bayview Loan Servicing, LLC).

1 meritless. *See* n.14, *supra*, and accompanying text.

2 In an effort to preserve its claims, the Bank is now seeking non-dispositive federal law by
3 forum shopping under the guise of efficient administration of the debtor's bankruptcy. The
4 Banks' hope is that this Court will follow their attempts to muddy the waters by taking positions
5 in relation to NRS Chapter 116's non-judicial foreclosure statutes that will conflict with those of
6 the Nevada Supreme Court in *Saticoy Bay* on matters of dispositive state law that are prejudicial
7 to the Banks. In light of the Bank's forum shopping, this factor alone should provide sufficient
8 equitable ground to remand this matter.

9 **2. The Lack of Efficient Administration of the Estate if the Court Retains This**
10 **Matter Favors Remand**

11 The second factor weighs in favor of remand because of the factual and legal issues that
12 must be resolved prior to any resolution of the claims. Bankruptcy courts have remanded cases
13 where "absent a settlement of the claims, prompt resolution of these claims through the
14 bankruptcy process is unlikely." *In re Roman Catholic Bishop of San Diego*, 374 B.R. 756, 762
15 (Bankr. S.D. Cal. 2007); *see also, Brown*, 2008 WL 2856854, at *2 ("Additionally, remand of
16 this action will not ... affect the administration of any bankruptcy estate because it is the outcome
17 of the case, not whether the claims are tried in state or federal court, that may have repercussions
18 in bankruptcy.").

19 Here, the resolution of which party has an interest in the real property is not central to the
20 administration of the Debtor's bankruptcy case because the debtor has no interest in the property.
21 Prompt resolution of these claims through the bankruptcy process is unlikely as the claims have
22 already been going on for years in state court. Further, the Bank's main due process claim was
23 settled in state court prior to it removing this matter, which now requires re-litigation and
24 additional discovery to argue the applicability of conflicting federal law, which is not even

dispositive. Moreover, the Bank admits in the financial entities' Motion to Set Confirmation Hearing that all these matters are too much for the Court's docket. See, ECF No. 329.

In addition to the scope of the prejudice heaped upon the involuntarily removed parties and this Court resulting from the Bank's removal of this matter, the Banks have made clear their intention to remove not only this case, but every state court case in which Debtor is a party based on its operations as a trustee.¹⁴ The cases will number in the hundreds. The Banks' will likely file several dozen more notices of removal *after* the deadline. See ECF Nos. 147, 148. As of the date of this filing, over 150 notices of removal have been filed. This Court will suffer the burden of having to oversee and administer these State Court actions which are each fact specific and will not benefit the estate, the Debtor, or the creditors. Retention of this matter will be devastating to the efficient administration of the bankruptcy estate, weighing strongly in favor of remand.

3. State Law Issues Predominate Over Bankruptcy Issues, Which Favor Remand

This third factor is fully in favor of remand as the entire issue is regarding Nevada State law. State law issues not only predominate in this litigation; all claims are based on state law, with no unique federal bankruptcy issues. Specifically, the center issue to this and all related matters is regarding NRS 116.3116 and the foreclosure of the subject real property. The Nevada Supreme Court has already addressed and resolved the issue of constitutionality in *Saticoy Bay*, finding NRS 116.3116 to be Constitutional and does not violate due process.

Both *Bourne Valley* and *Saticoy Bay* are being submitted for certiorari to the United States Supreme Court. No matter how the pending certiorari proceedings are resolved, the

¹⁴ See n.14, *supra*; see also ECF No. 130 at 32-53, 64-66 (Debtor's Schedules listing 209 actions in the Nevada District Courts, and one in Las Vegas Justice Court). Also listed are 174 additional cases currently pending in Nevada Real Estate Division Mediation which likely will soon end up in the Nevada District Courts. See *id.* at 66-82.

question of how to apply Nevada's non-judicial foreclosure system post-*Bourne Valley* and how *Saticoy Bay* applies will be a question that must ultimately be resolved by the state courts, not a federal court, and that state ruling will be binding on this Court.¹⁵ Further, this issue is dispositive in state court and the remaining claims are fact specific to this case. There are no bankruptcy issues that need to be determined before the case can be tried. Further, the State trial and appellate courts are absolutely competent to handle the issues surrounding the state law claims in this case. As such, this factor weighs in favor of remand.

4. The Interests of Comity Towards State Court Favor Remand

This fourth factor is in favor of remand as not doing so would outright render the Nevada Supreme Court's decision in *Saticoy Bay* meaningless in state court. Comity arises from the deference of one sovereign to another and "focuses on the state's interest in developing its law and applying its law to its citizens." *ML Media Partners, L.P. v. Century/ML Cable Venture (In re Adelpia Communications Corp.)* 285 B.R. 127, 136–137 (Bankr.S.D.N.Y.2002) (citing *Renaissance Cosmetics*, 277 B.R. at 16); *River Center Holdings*, 288 B.R. at 70. A state court's familiarity with the issues also favors remand under comity. *Shiboleth v. Yerushalmi*, 412 B.R. 113, 118 (S.D.N.Y. 2009) In *Shiboleth* remand was warranted because the state court had greater familiarity with the issues after two years of being on the docket. *Id.* at 121.

Comity and the resolution of state law questions by state courts favors remand. *Thomasson v. AmSouth Bank, N.A.*, 59 B.R. 997, 1002 (N.D.Ala.1986)(The presence of facts supporting abstention, when coupled with related considerations of comity and preference for the resolution of state law questions by state courts, implied in section 1452(b), "tips the scales of

¹⁵ See n.9, *supra*; see also, e.g., *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1016 (9th Cir. 2009) ("We remand to allow the district court to determine whether the unconstitutional provisions are severable from the remainder of § 5.60"); see also *Arizona Libertarian Party v. Bayless*, 351 F.3d 1277, 1283 (9th Cir. 2003). Severability is a question of state law. *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996).

equity in favor of remand..."); *In re Hilsman*, 351 B.R. 209, 217 (Bankr.N.D.Ala.2006). State courts have more expertise in interpreting state law, which weighs in favor of remand. *In re Enron Corp.*, 296 B.R. 505, 509 (C.D. Cal. 2003). "The presence of federal constitutional defenses already unsuccessfully litigated does not cause the federal government to have an equally compelling interest." *In re Roman Catholic Bishop of San Diego*, 374 B.R. 756, 764 (Bankr. S.D. Cal. 2007). Remand based on deference to state court is appropriate when the removed action was "already scheduled for trial before the state court." *In re Wolford*, No. 2:15-AP-01530-RK, 2016 WL 65791, at *3 (Bankr. C.D. Cal. Jan. 4, 2016).

Here, the central issue in the State Court actions is Nevada's non-judicial foreclosure statutes. This matter was filed over a year ago and is based on state law. The Bank removed this matter after *Saticoy Bay*, after the close of discovery and dispositive motions, during the parties' preparation of trial on March 13, 2017. The Nevada Supreme Court has already resolved any constitutional issues of due process in *Saticoy Bay* prior to this removal. The Banks' unsuccessful litigation of that issue does not warrant a second chance under more favorable federal law. The only issues that remain (ownership and interest in land) are questions of state law, which Nevada has a compelling interest in because the land is located in Nevada and most of the parties reside within Nevada. Further, this matter was preparing for trial, which Nevada also has an interest in resolving under state law.

The Banks' federal constitutional defenses were already unsuccessfully litigated in front of the Nevada Supreme Court. While both *Bourne Valley* and *Saticoy Bay* are currently before the Supreme Court in certiorari proceedings, whatever happens in those certiorari proceedings, it is the Nevada state courts that will have to finally resolve the operation of Nevada's non-judicial foreclosure statutes. As such, comity strongly favors the state court forum over the federal court.

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1 **5. The Jurisdictional Basis of This Matter Renders This Factor, at Best, Neutral**

2 The fifth factor is, at best, neutral. Courts have viewed this factor as neutral even when
3 there is “no question that this court could retain the litigation in bankruptcy court as related to the
4 bankruptcy case, pursuant to 28 U.S.C. § 1334.” *In re Peak Web LLC*, 559 B.R. 738, 743 (Bankr.
5 D. Or. 2016), *aff’d sub nom. Mach. Zone, Inc. v. Peak Web, LLC*, 16-03083-PCM, 2017 WL
6 517796 (D. Or. Feb. 7, 2017).

7 Here, the Bank’s claims in the State Court action are quieting title, declaratory relief, and
8 unjust enrichment. See ECF No. 181, Ex. 24. All the State Court actions are based solely on
9 state law grounds. The Nevada District Courts have original jurisdiction over the subject matter
10 of the State Court actions under the Nevada Constitution, Art. 6, sec. 6, and NRS 4.370 and
11 venue is proper there under NRS 13.010(a). Whether or not there is a basis for diversity
12 jurisdiction is not an important factor in deciding whether to remand in this case. While this
13 court could retain the litigation in bankruptcy court as related to the bankruptcy case, there are no
14 federal law claims, only defenses. This factor is, at best, neutral.

15 **6. The Presence of Related Proceeding Commenced in State Court or Other**
16 **Non-bankruptcy Proceeding Favors Remand**

17 The sixth factor weighs in favor of remand. This factor weighs against remand when
18 there are no other related proceedings in state court. See, *In re Doctors Hosp. 1997, L.P.*, 351
19 B.R. 813, 848 (Bankr. S.D. Tex. 2006). Remand is warranted when the nature of bankruptcy
20 proceeding was not initiated by the party in this adversary proceeding as a claim against the
21 estate, but as a counterclaim to a state law cause of action. *In re Republic Reader's Serv., Inc.*, 81
22 B.R. 422, 429-430 (Bankr. S.D. Tex. 1987). This factor further favors remand when there are
23 “other related nonbankruptcy proceedings pending between these and other parties in state
24 court.” *In re Schempp Real Estate, LLC*, 303 B.R. 866, 877-879 (Bankr. D. Colo. 2003). This

1 factor also takes into account how long the state court proceedings have been taken place. *Id.*

2 Here, there are no core proceedings, only issues that are related to the bankruptcy, which
3 have several similar matters still in state court. The nature of this matter is not founded in
4 bankruptcy as the proceedings began over a year before the debtor declared bankruptcy, and
5 removed after discovery had ended and dispositive motions submitted. Similar to the related
6 proceeding commenced in state court in *Schempp Real Estate*, the matters here have been going
7 on for years between the parties in various cases. Indeed, there are hundreds more similar cases
8 pending in the state courts right now to which Debtor is not a party. As such, this factor favors
9 remand.

10 **7. The Degree of Relatedness and Remoteness of the State Court Proceeding to**
11 **the Main Bankruptcy Case Favors Remand**

12 The seventh factor weighs in favor of remand. It is relevant to consider whether the
13 adversary proceeding is “core” or “non-core.” *Eastport Associates v. City of Los Angeles (In re*
14 *Eastport Associates)*, 935 F.2d 1071, 1076 (9th Cir.1991). There are three ways a proceeding
15 may be classified as core: first, as a case “arising under title 11,” 28 U.S.C. § 157(b)(1); second,
16 as a case “arising in a case under title 11,” *Id.*; and third, under 28 U.S.C. § 157(b)(2), which
17 provides a non-exhaustive list of core proceedings. *In re Wolford*, No. 2:15-AP-01530-RK, 2016
18 WL 65791, at *2 (Bankr. C.D. Cal. Jan. 4, 2016). Proceedings that would have arisen regardless
19 of a debtor’s bankruptcy are not based on any provision of title 11 and not typically considered
20 core. *In re Enron Corp.*, 296 B.R. 505, 509 (C.D. Cal. 2003).

21 Here, the state law claims under NRS 116 do not merit “arising under” or “arising in”
22 jurisdiction, nor do they fall under any of the categories listed in 28 U.S.C. § 157(b)(2). The
23 proceedings in this matter arose regardless of bankruptcy because the matter was originally filed
24 in State court on May 7, 2015. At that time, the Alessi had not declared bankruptcy and was not a

1 party. Debtor was merely the foreclosure trustee who conducted the foreclosure sale, and whose
 2 relevance in the context of notice under Nevada's non-judicial foreclosure statutes has been
 3 further diminished by both the *Bourne Valley* and *Saticoy Bay* rulings. Further, the Bank waited
 4 until on February 9, 2017, almost two months after the Debtor declared bankruptcy, to bring up
 5 its intent to remove this matter during the continued pre-trial calendar call in preparation of trial,
 6 which is after the ruling in *Saticoy Bay*, and the matter was stayed until the bankruptcy stay
 7 could be lifted. It was over a year after the original filing date that Alessi & Koenig filed for
 8 bankruptcy. This action is based on state law claims of wrongful foreclosure with no nexus to the
 9 bankruptcy court other than that one of defendants is the Debtor in the bankruptcy case. As such,
 10 this matter is a non-core proceeding and this factor favors remand.

11 **8. The Substance Rather Than the Form of an Asserted Core Proceeding is**
 12 **Irrelevant in This Case as There is No Core Proceeding**

13 For the previously stated reasons, the eighth factor is irrelevant because this is a non-core
 14 proceeding. As such, this factor is, at best, neutral.

15 **9. There Are No Core Bankruptcy Matters and State Court Judgments Can be**
 16 **Enforced in Bankruptcy Court; Favoring Remand**

17 The ninth factor, if anything, weighs in favor of remand because there is no reason why a
 18 judgment obtained in state court cannot be brought back to this Court for enforcement. As argued
 19 above, the state court proceedings are not core to the bankruptcy and major issues were resolved
 20 by the Nevada Supreme Court in *Saticoy Bay* prior to this removal. As such, this factor favors
 21 remand.

22 **10. The Deprivation of a Right to a Jury Trial Favors Remand**

23 The tenth factor is either neutral or weighs in favor of remand because the right to a jury
 24 trial does not require remand, but it does weigh in favor of remand. *In re Peak Web LLC*, 559
 B.R. 738, 744 (Bankr. D. Or. 2016), *aff'd sub nom. Mach. Zone, Inc. v. Peak Web, LLC*, No. 16-

03083-PCM, 2017 WL 517796 (D. Or. Feb. 7, 2017).

Here, no party has requested a jury trial, which makes this factor neutral.

11. The Simple and Settled Nature of Applicable State Law as Compared to Federal law Favors Remand

The eleventh factor favors remand as Courts tend to favor remand when the legal or factual issues in a matter are complex or novel. *In re Peak Web LLC*, 559 B.R. 738, 742–43 (Bankr. D. Or. 2016), *aff'd sub nom. Mach. Zone, Inc. v. Peak Web, LLC*, No. 16-03083-PCM, 2017 WL 517796 (D. Or. Feb. 7, 2017).

Here, although this Court is capable of resolving issues of state law, this matter concerns complex legal and factual issues if retained. Prior to removal, the Nevada Supreme ruled in *Saticoy Bay* that there is no state actor to warrant due process or similar claims, which ends the matter. However, the Bank wants to use the Ninth Circuit Court of Appeal's decision in *Bourne Valley* to argue that there is a state actor and their due process rights were violated. However, *Bourne Valley* will not settle this matter; it only makes it much more complex.

Further, if *Bourne Valley* were applied, it would merely mean the prior version of an unconstitutional statute would be used, which would require litigation of every case individually because of the various issues that are factually specific to this and other cases.

Even the federal courts within this district cannot agree on whether or how to apply *Bourne Valley* as to Nevada's non-judicial foreclosure statutes. One federal judge in this district has embraced *Bourne Valley*'s pronouncements,¹⁶ while five other federal judges in this district have expressed their direct disagreement with the Ninth Circuit's gloss on the state law issues addressed in *Bourne Valley*.¹⁷ Most recently, yet another federal judge in this district has taken

¹⁶ See *U.S. Bank, N.A. v. SFR Invs. Pool 1, LLC*, No. 3:15-cv-00241-RCJ-WGC, 2016 WL 4473427, at *6 (D. Nev. Aug. 24, 2016).

¹⁷ See *Las Vegas Dev. Grp., LLC v. Yfantis*, ___ F. Supp. 3d ___, No. 2:15-cv-01127-APG-

1 issue with *Bourne Valley* and asserted that it did nothing to alter the fact that due process does
 2 not require actual notice, and that reasonable notice of the trustee's sale to the bank was
 3 sufficient to cure any constitutional defect inherent in NRS 116.31163(2) even under the *Bourne*
 4 *Valley* ruling.¹⁸

5 Further, this matter has been in state court for over a year and Motions for Summary
 6 Judgment prior to Saticoy Bay were denied, which show the legal and factual issues are not
 7 simple. Otherwise, this matter would have been resolved long ago. Several matters related to
 8 these HOA foreclosure cases have been appealed to the Nevada Supreme Court.¹⁹ The main
 9 issues and claims have now been resolved through binding authority in state law. Remanding this
 10 matter to state court will keep it simple, while keeping it in Bankruptcy Court under Federal
 11 Court will keep it complex. As such, this factor weighs in favor of remand.

12 **12. The Burden on the Bankruptcy Court's Docket Favors Remand**

13 The twelfth factor weighs in favor of remand since litigation of non-core state law issues
 14 raised in the lawsuit would burden this court in light of the absence of the need to litigate such
 15 issues for the administration of this bankruptcy case. *In re Wolford*, No. 2:15-AP-01530-RK,
 16 2016 WL 65791, at *3 (Bankr. C.D. Cal. Jan. 4, 2016). Further, significant pretrial matters that

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 18 CWH, 2016 WL 1248693, at *3-6 (D. Nev. Mar. 24, 2016) (Gordon, J.); *Morgan Chase Bank v.*
 19 *SFR Investments Pool 1*, 2:14-cv-02080-RFB-GWF, 2016 WL 4084036, at *8 (D. Nev. July 28,
 20 2016) (Boulware, J.); *Capital One v. Las Vegas Dev. Group*, No. 2:15-cv-01436-JAD-PAL,
 2016 WL 3607160, at 5 (D. Nev. June 30, 2016) (Dorsey, J.); *Bank of Amer. V. Rainbow Bend*
 21 *HOA*, No. 3:15-cv-00291-MMD-WGC, 2016 WL 12998114, at *3 (D. Nev. Mar. 31, 2016) (Du,
 22 J.); *Deutsche Bank v. TBR I, LLC*, No. 3:15-cv-00401-LRJ-WGC, 2016 WL 3965195, at *3 (D.
 23 Nev. July 22, 2016) (Hicks, S.J.).

21 18 See, e.g., *Bank of America, N.A. v. SFR Investments Pool 1, LLC, et al.*, U.S. District Court,
 District of Nevada, Case No. 2:15-cv-1768-JCM-CWH, ECF No. 88 at 17:12-19:2.

22 19 See, e.g., *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg., a Div. of*
Wells Fargo Bank, N.A., 388 P.3d 970 (Nev. 2017); *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*,
 23 132 Nev. Adv. Op. 5, 366 P.3d 1105 (2016); and *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev.
 24 Adv. Op. 75, 334 P.3d 408 (2014).

1 will take “a significant amount of the trial judge's time, whether matters of discovery disputes,
 2 motion practice, or the like”, favor remand. *In re Peak Web LLC*, 559 B.R. 738, 743–44 (Bankr.
 3 D. Or. 2016), *aff'd sub nom. Mach. Zone, Inc. v. Peak Web, LLC*, No. 16-03083-PCM, 2017 WL
 4 517796 (D. Or. Feb. 7, 2017). While a bankruptcy court is certainly capable of resolving such
 5 disputes, “the bankruptcy court's role is ordinarily focused on issues arising under bankruptcy
 6 law and managing the reorganization process, not conducting complex litigation.” *Id.*

7 Here, this litigation will be devastating to this Court’s docket if it were retained. The
 8 involuntarily parties have not consented to any entry of final judgment by the bankruptcy judge.
 9 As such this court would need to conduct all pre-trial matters. Each of these cases is factually
 10 and procedurally unique, and will require individual attention, individualized briefing, and likely,
 11 discovery. This Court has no prior knowledge of the parties or the case and would have to
 12 become familiar with the parties, as well as the factual and legal issues specific to this case. The
 13 resolution of this matter does not arise under bankruptcy, but is merely related to the bankruptcy
 14 because the Debtor is a named party. Further, resolving the issues will involve matters beyond
 15 managing the reorganization process, including, but not limited to, the applicability and effect of
 16 federal law in light of whether the Bank received actual notice, resolving the Bank’s actual
 17 notice, and the determination of equitable relief between all parties. Moreover, as discussed
 18 above, *supra.*, contrary to the Bank’s belief, *Bourne Valley* is not applicable in all cases and is
 19 not dispositive. As such, this factor weighs in favor of remand.

20 **13. The Presence of the Association and the Buyer as Non-Debtor Parties in the**
 21 **Proceeding Favors Remand**

22 The thirteenth factor weighs in favor of remand. “The presence of other non-debtor
 23 parties would weigh in favor of abstention [or remand].” *In re Asousa Partnership*, 264 B.R.
 24 376, 391 (Bankr. E.D. Pennsylvania. 2001). Further, Courts have found this matter at best neutral

1 when only the debtor and another party are present. *See, ID.*

2 Here, there are parties in this action other than Debtor and the removing party. The
3 Association and the Buyer both have no claims against the Debtor in this matter and neither party
4 is a Debtor. Removing hundreds of state court cases that involve non-debtor parties is disruptive,
5 unnecessary, and unfair to the non-debtor parties. The rights of these non-debtor parties to
6 redress in state court will be circumvented, and their ability to obtain timely and complete
7 resolution of their pending issues in the chosen state forum will be prejudiced and delayed.
8 Debtor will not receive a discharge here, and the Trustee has admitted that this is a no-asset case,
9 and that she will not be intervening in any litigation on Debtor's behalf to bring any benefit to
10 the estate. *See* ECF No. 331. As such, this factor weighs in favor of remand.

11 **14. The Prejudice to the Party Involuntarily Removed from State Court Favors**
12 **Remand**

13 This factor weighs in favor of remand as the parties involuntarily removed from state
14 court can no longer take advantage of state law. Courts will generally remand when a plaintiff is
15 prejudiced by the loss of their chosen forum. *Spaulding v. Mingo County Bd. of Educ.*, 897 F.
16 Supp. 284, 288 (D. W. Va. 1995)([G]reat weight is given to the plaintiff's chosen forum and
17 legitimate doubts as to the existence of federal jurisdiction must be resolved against removal and
18 in favor of remand).

19 Here, the original Plaintiff CKVC Investments initially brought this matter in state court,
20 which the Bank never attempted to remove. Further, discovery had ended and the trial in this
21 matter was already continued once and this matter was stayed at the pre-trial calendar call. If this
22 matter had been left in state court it would have already been litigated by the time this remand is
23 resolved. *See*, ECF No. 181, Ex. 56. The Bank now seeks to circumvent the fact that their claims
24 are no longer viable under state law and attempting to escape trial by treating each case as

exactly the same under *Bourne Valley*. Further, retention of this matter would require new discovery to gather facts from the Bank that was previously not required to build a defense in state court, such as proof of actual notice. As such, this factor would weight in favor of remand.

B. CONSOLIDATION OF THIS OR RELATED CASES WOULD RESULT IN UNPRECEDENTED PREJUDICE TO THE OTHER PARTIES IN THIS MATTER

Many parties, including the Association in this matter, had pending dispositive motions or on the eve of trial that the Banks knew about and are now attempting to deprive with such a consolidation. In this matter, as is likely with others, dispositive motions were already filed and the parties were preparing for trial.

Contrary to the Bank's position, *Bourne Valley* is in no way dispositive in this matter, assuming it is even applicable. Each and every case has different facts that would prevent the applicability for *Bourne Valley*. Specifically, many claims could be time barred based on when the Bank knew of the claims or the Bank could have received actual notice rendering *Bourne Valley* moot. Indeed, as argued above, even the Federal Court's within this district cannot agree on whether or how to apply *Bourne Valley* as to Nevada's non-judicial foreclosure statutes. One federal judge in this district has embraced *Bourne Valley*'s pronouncements,²⁰ while five other federal judges in this district have expressed their direct disagreement with the Ninth Circuit's gloss on the state law issues addressed in *Bourne Valley*.²¹ Most recently, yet another federal

²⁰ See *U.S. Bank, N.A. v. SFR Invs. Pool 1, LLC*, No. 3:15-cv-00241-RCJ-WGC, 2016 WL 4473427, at *6 (D. Nev. Aug. 24, 2016).

²¹ See *Las Vegas Dev. Grp., LLC v. Yfantis*, ___ F. Supp. 3d ___, No. 2:15-cv-01127-APG-CWH, 2016 WL 1248693, at *3-6 (D. Nev. Mar. 24, 2016) (Gordon, J.); *Morgan Chase Bank v. SFR Investments Pool 1*, 2:14-cv-02080-RFB-GWF, 2016 WL 4084036, at *8 (D. Nev. July 28, 2016) (Boulware, J.); *Capital One v. Las Vegas Dev. Group*, No. 2:15-cv-01436-JAD-PAL, 2016 WL 3607160, at 5 (D. Nev. June 30, 2016) (Dorsey, J.); *Bank of Amer. V. Rainbow Bend HOA*, No. 3:15-cv-00291-MMD-WGC, 2016 WL 12998114, at *3 (D. Nev. Mar. 31, 2016) (Du, J.); *Deutsche Bank v. TBR I, LLC*, No. 3:15-cv-00401-LRJ-WGC, 2016 WL 3965195, at *3 (D. Nev. July 22, 2016) (Hicks, S.J.).

1 judge in this district has taken issue with *Bourne Valley* and asserted that it did nothing to alter
 2 the fact that due process does not require actual notice, and that reasonable notice of the trustee's
 3 sale to the bank was sufficient to cure any constitutional defect inherent in NRS 116.31163(2)
 4 even under the *Bourne Valley* ruling.²²

5 This Banks' contention that the State Court actions can be disposed of in this Court with
 6 some sort of consolidated "partial" summary judgment motion relating to the *Bourne Valley*
 7 ruling is particularly absurd. *See, e.g.*, ECF No. 328 at 7-8. The Banks' proposal for some
 8 omnibus motion is nothing more than a thinly veiled effort to expedite their blatant *Saticoy Bay /*
 9 *Bourne Valley*-related forum shopping, and prevent the involuntarily removed parties from
 10 actually litigating their claims and defenses as well as prevent remand of this and the other
 11 removed matters. *See* Section II(A), *supra*.

12 The State Court actions are all different and cannot be addressed *en masse*. Many cases
 13 are positioned such that *Bourne Valley* can have absolutely no impact on them due to the Banks'
 14 claims being time barred or on the eve of trial. Further, some cases are interpleader actions
 15 where Debtor is the plaintiff and others render *Bourne Valley* inapplicable because of actual
 16 notice. In some cases the Banks are the plaintiff and seek relief from Debtor as a named party.
 17 In other cases, the Debtor is named but not as named party. These few examples alone present
 18 significant differences in the parties' positions that require independent briefing.

19 As such, any consolidation would deprive the involuntary moved parties from its due
 20 process rights to conduct discovery on relevant facts that were not required in state court.
 21 Further, such factual requirements would require a review of the applicability of *Bourne Valley*
 22 on each and every removed case. Moreover, this matter, like others, involved issues related to the

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 24 ²² *See, e.g., Bank of America, N.A. v. SFR Investments Pool 1, LLC, et al.*, U.S. District Court,
 District of Nevada, Case No. 2:15-cv-1768-JCM-CWH, ECF No. 88 at 17:12-19:2.

1 Bank's standing to bring the claims as well as parties making preparations for trial, which was
 2 surely not mentioned on the Bank's part as an oversight. In the interest of efficiency, the
 3 Association requests that any attempt to consolidate these matters be denied and this matter be
 4 remanded back to state court so that the dispositive state law from the Nevada Supreme Court
 5 can resolve this matter.

6 **C. THE INVOLUNTARILY REMOVED PARTIES ARE ENTITLED TO COSTS**
 7 **AND ANY ACTUAL EXPENSES, INCLUDING ATTORNEY FEES, INCURRED**
 8 **AS A RESULT OF THE REMAND PURSUANT TO 28 U.S.C. § 1447(C)**

9 "An order remanding the case may require payment of just costs and any actual expenses,
 10 including attorney fees, incurred as a result of the remand." 28 U.S.C. § 1447(c). Section 1447 is
 11 one of many provisions governing the general removal jurisdiction of the federal courts. While
 12 the bankruptcy removal statute that was used in this instance, 28 U.S.C § 1452, contains no
 13 provision relating to payment of costs, "the Supreme Court has held that certain parts of § 1447
 14 comfortably coexist in the bankruptcy context." *In re RJZM LLC*, 06-11535(ALG), 2009 WL
 15 2929433, at *5 (Bankr. S.D.N.Y. July 28, 2009) (citing *Things Remembered, Inc.v. Petrarca*,
 16 516 U.S. 124, 129 (1995)) (internal quotes omitted). Courts have held that the costs provisions
 17 of § 1447(c) apply to orders of remand under § 1452(b). *RJZM LLC*, 06-11535(ALG), 2009 WL
 18 2929433, at *5; *see also, Coward v. AC and S, Inc.*, 91 Fed.Appx. 919 (5th Cir.2004); *In re*
Friedman & Shapiro, P. C., 185 B.R. 143 (S.D.N.Y.1995).

19 Here, the Bank's removal of this matter is blatant forum shopping and upon review of the
 20 overwhelming equitable factors above, this matter should be remanded. Upon remand, the
 21 involuntarily removed parties, including the Association, are entitled to all just costs and any
 22 actual expenses, including attorney fees, under § 1447(c) that they incurred as a result of the
 23 remand. None of these expenses would have occurred outside of removal and the involuntarily
 24 removed parties should not have to suffer the costs of remanding such matter that are motivated by

1 the Bank's desire to avoid unfavorable state law.

2 **III.**

3 **CONCLUSION**

4 Having taken all of the factors into account, as well as considering judicial efficiency,
 5 this matter should be remanded to state court. This is not a close call. Many factors support this
 6 conclusion, but most important factors favoring remand are: 1) the commencement of this
 7 proceeding in bankruptcy court involves blatant forum shopping by the Bank; 2) the factual and
 8 legal issues that must be resolved prior to any resolution of the claims; 3) state law issues
 9 predominate over bankruptcy issues; 4) comity towards the Nevada Supreme Court; 6) the
 10 presence of related proceeding commenced in state court or other non-bankruptcy proceeding; 7)
 11 the state court proceeding is merely related to the bankruptcy; 9) there are no core bankruptcy
 12 matters and state court judgments can be enforced in bankruptcy court; 11) the nature of
 13 applicable state law is simple and settled; 12) retaining all these matters would create a burden
 14 on the bankruptcy court's docket; 13) the presence of the Association and the Buyer as non-
 15 debtor parties in the proceeding; and 14) the prejudice to the party involuntarily removed from
 16 state court during preparation for trial. The factors weighing against remand or that are neutral

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are few and are not significant enough to outweigh the factors that weigh heavily in favor of remand.

DATED this 22nd day of March, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of March, 2017, I served the foregoing MOTION TO REMAND ACTION TO NEVADA STATE COURT via Electronic Service through the Court's electronic filing system upon the following:

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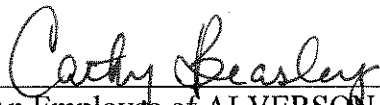
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CERTIFICATE OF SERVICE VIA CM/ECF

1 I hereby certify that on this 22 day of March, 2017, I did serve, via Case
2 Management/Electronic Case Filing, a copy of the above and foregoing **MOTION TO
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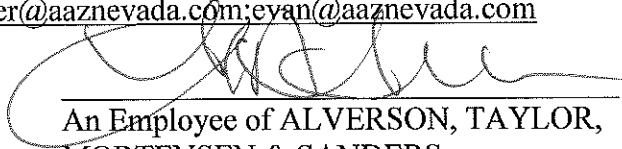
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